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November 22, 2000

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-B204
Washington, D.C. 20554

Re: Applications of America Online, Inc. and Time Warner, Inc. for Transfer of Control (CS Docket No. 00-30)
Notice of Ex Parte Presentation

Dear Ms. Salas:

On November 21, 2000, Dr. Frederick Warren-Boulton, of Microeconomics Consulting and Research, Inc., on behalf of IM Unified, and C. Frederick Beckner III and the undersigned, counsel to AT&T, met with Commissioner Powell, Kyle Dixon and Susan Eid. That same day, Messrs. Warren-Boulton and Beckner and the undersigned met with Deborah Lathen, Royce Dickens, Sherille Ismail, and Peter Friedman of the Cable Service Bureau, John Berresford of the Common Carrier Bureau, Gerald Faulhaber (via telephone) and Michael Kende of the Office of Plans and Policy, and James Bird and Joel Rabinovitz of the Office of General Counsel. In both meetings, Dr. Warren-Boulton gave a presentation on the impact of the AOL-Time Warner merger on instant messaging ("IM") competition.

Dr. Warren-Boulton discussed the horizontal network effects that exist because the value of an IM service increases with the number of users. He also described the vertical network effects that exist because IM is a platform on which other applications can ride. Thus, the more applications written for a particular IM service, the greater its value. Dr. Warren-Boulton further described how, while AOL's customers would prefer interoperability, AOL itself clearly benefits from blocking interoperability because these network effects make it much more difficult, if not impossible, for its smaller rivals to compete.

In this regard, Dr. Warren-Boulton rebutted claims that there are no network effects because switching costs are low and because a recent press release by Media Metrix suggests that two AOL rivals, Yahoo and Microsoft, are gaining share. Dr. Warren-Boulton discussed why the lack of interoperability imposes significant costs on consumers in all contexts,

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and particularly high costs in the context of wireless and other non-PC IM devices. Dr. Warren-Boulton also explained that these costs cannot be ignored on a theory that IM users voluntarily sort themselves into small, homogeneous groups – even if IM "buddy lists" were generally homogeneous, overlap between IM groups and the need to accommodate in real time users leaving and joining IM groups makes it very difficult for a group of IM users to switch IM services. It is also the case as business IM applications continue to grow, that IM "buddy lists" will become increasingly heterogeneous. Moreover, there can be no assumption that users have voluntarily segregated buddy groups among competing services. To the contrary, as Media Metrix's president concluded, it is the lack of interoperability that is artificially causing "heavy users" to "adopt more than one brand in order to keep in touch with all their friends and colleagues." November 16, 2000 Media Metrix Press Release (attached to AOL's November 17, 2000 *ex parte* letter).

With regard to the Media Metrix report, Dr. Warren-Boulton noted that the report appeared to understate AOL's share by excluding both AOL's many ISP customers that use its IM (as opposed to AIM and ICQ customers that are not AOL subscribers but have separately downloaded its IM programs) and ICQ's non-U.S. customers. Dr. Warren-Boulton further explained that the "unique users" measured by the Media Metrix report - which added to a provider's "share" any customer that used its service even *once* in the last month - is competitively irrelevant. The real question is duration and intensity of use. Although AOL presumably has access to that data, it has not submitted it.

Dr. Warren-Boulton also explained how the merger is likely to harm competition and consumers because of the combination of AOL's dominant IM distribution and Time Warner's vast library of content that can be used with IM applications. The merger gives AOL an incentive (that it did not have pre-merger) to discriminate in favor of Time Warner "intelligent agent" and other IM applications as compared to rival IM applications. Further, after the merger, AOL will be able to obtain Time Warner content for IM applications at the very low marginal cost of that content. That is because once the content is developed, it costs little (if anything) to distribute that content to additional subscribers. Rival IM providers, on the other hand, buy content at market prices. Given AOL's existing dominance and the strong network effects associated with IM, these effects of the merger create a substantial risk that that, absent interoperability, the market will irreversibly tip in AOL's favor.

Sincerely,

David Lawson /cwb

David Lawson

cc: Ms. Magalie Roman Salas
Commissioner Michael Powell
Mr. Kyle Dixon
Ms. Susan Eid
Ms. Kathy Brown
Ms. Karen Onyeije
Mr. David Goodfriend
Ms. Helgi Walker
Mr. Jay Friedman
Ms. Deborah Lathen
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